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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,761	02/06/2001	Gerald B. Murphy	P04722US0	4274
22885 7590 01/03/2007 MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			EXAMINER NAJARIAN, LENA	
			ART UNIT	PAPER NUMBER
			3626	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/777,761

Applicant(s)

MURPHY, GERALD B.

Examiner

Lena Najarian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15 and 17-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15 and 17-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 10/17/06. Claims 15 and 17-29 remain pending. Claims 15, 17, 18, 19, and 29 have been amended.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 15 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of Remley et al. (US 2002/0023052 A1), and further in view of O'Brien ("Grain Marketing Plans for Farmers").

(A) Referring to claim 15, Hay discloses a computer-assisted method of providing agricultural services to independent agricultural producers to assist in raising income of the agricultural producers comprising (para. 58, para. 24 and para. 39 of Hay):

wherein the step of developing agricultural plans for each of the agricultural producers comprises

- (a) eliciting information from the producer (para. 62 of Hay);
- (b) performing a financial assessment for an agricultural business of the independent producer (para. 52 of Hay);

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(c) determining a financial assessment score based on the financial assessment (para. 51 and para. 52 of Hay; the Examiner interprets “factor” to be a form of “score”); and

(d) calculating a marketing financial risk score wherein the marketing financial risk score is defined as a numeric value describing financial risks related to markets and income of each agricultural enterprise associated with the agricultural business (para. 52 of Hay); and

(e) determining pre-sell quantities using the financial assessment score and the marketing financial risk score (para. 62, para. 68, para. 118, para. 113, and para. 52 of Hay);

Hay does not disclose tying financial obligations of the agricultural producers to the use of written agricultural marketing action plans such that the agricultural producers are required to commit to using the written agricultural marketing plans as a condition for receiving financing and wherein the updated marketing information comprises probabilities of price targets.

Remley discloses tying financial obligations of the agricultural producers to the use of the agricultural plans such that the agricultural producers are required to commit to using the agricultural plans as a condition for receiving financing (para. 7 and para. 41 of Remley); and wherein the updated marketing information comprises probabilities of price targets (para. 5 of Remley).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Remley within Hay. The

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motivation for doing so would have been for the guarantor and the producer to both benefit from the arrangement and to reduce the risks associated with the agriculture business (para. 4 of Remley).

Hay and Remley do not expressly disclose developing written agricultural marketing action plans for the agricultural producers, the agricultural marketing action plans requiring updated marketing information, providing marketing information to the agricultural producers in order to update the agricultural marketing plans; determining pre-sell quantities using a price risk associated with a commodity market, (f) calculating a level of crop revenue insurance to assure a predetermined level of income from sale of predetermined pre-sell quantities of crops for use in meeting the financial obligations, such that the financing is underwritten by pre-selling and the pre-selling is underwritten by the level of crop insurance, and (g) forming a plan of action for agricultural marketing which makes decisions based on the marketing information, the financial assessment, the marketing financial risk score, the pre-sell quantities, and the level of crop revenue insurance.

O'Brien discloses developing written agricultural marketing action plans for the agricultural producers, the agricultural marketing action plans requiring updated marketing information (page 20 of O'Brien), providing marketing information to the agricultural producers in order to update the agricultural marketing plans (page 20 of O'Brien); determining pre-sell quantities using a price risk associated with a commodity market (pages 5-6, and 18 of O'Brien), (f) calculating a level of crop revenue insurance to assure a predetermined level of income from sale of predetermined pre-sell quantities

of crops for use in meeting the financial obligations, such that the financing is underwritten by pre-selling and the pre-selling is underwritten by the level of crop insurance (pages 13-14, and 19 of O'Brien) and (g) forming a plan of action for agricultural marketing which makes decisions based on the marketing information, the financial assessment, the marketing financial risk, the pre-sell quantities, and the level of crop revenue insurance (pages 4-5 and 21-22 of O'Brien).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of O'Brien within Hay and Remley. The motivation for doing so would have been for farmer-marketers to enhance or improve their selling or purchase prices of crops (page 5 of O'Brien).

(B) Referring to claim 29, Hay discloses a computer-assisted method of creating a strategic independent agricultural plan for an agricultural business, comprising (para. 58 and para. 39 of Hay):

determining a financial assessment score for the agricultural business (para. 51 and para. 52 of Hay)

determining a marketing financial risk score for each agricultural enterprise of the business, the marketing financial risk score associated with financial risks related to markets and income of each of the agricultural enterprises (para. 52 of Hay)

determining pre-sell quantities of crops for pre-selling for each of the agricultural enterprises (para. 65 and para. 104 of Hay).

Hay does not disclose determining a level of assured income for each of the agricultural enterprises.

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Remley discloses determining a level of assured income for each of the agricultural enterprises (para. 3, para. 4, para. 40, and para. 41 of Remley).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Remley within Hay. The motivation for doing so would have been to reduce the risks associated with the agriculture business (para. 4 of Remley).

Hay and Remley do not disclose receiving a price risk from a marketing service, wherein the price risk is a price risk associated with a commodity market and is determined using a computer analysis and calculating a level of crop revenue insurance for each of the agricultural enterprises to protect revenue generated from pre-selling, thereby underwriting the pre-selling with the crop revenue insurance and underwriting the assured income with the pre-selling.

O'Brien discloses receiving a price risk from a marketing service, wherein the price risk is a price risk associated with a commodity market (pages 5-6 and 18 of O'Brien) and calculating a level of crop revenue insurance for each of the agricultural enterprises to protect revenue generated from pre-selling, thereby underwriting the pre-selling with the crop revenue insurance and underwriting the assured income with the pre-selling (pages 13-14 and 19 of O'Brien).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of O'Brien within Hay and Remley. The motivation for doing so would have been for farmer-marketers to enhance or improve their selling or purchase prices of crops (page 5 of O'Brien).

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4. Claims 17 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of O'Brien ("Grain Marketing Plans for Farmers").

(A) Referring to claim 17, Hay discloses a computer-assisted method of creating a strategic agricultural plan for an agricultural business of an independent agricultural producer comprising (para. 58 and para. 39 of Hay):

eliciting information from a producer (para. 62 of Hay);

performing a financial assessment of the business of the independent agricultural producer (para. 52 of Hay);

determining a financial assessment score based on the financial assessment (para. 51 and para. 52 of Hay);

calculating a marketing financial risk score wherein the marketing financial risk score is defined as a numeric value describing financial assessment factors associated with financial risks related to markets and income of each enterprise of the agricultural businesses (para. 52 of Hay); and

determining pre-sell quantities using the financial assessment score and the marketing financial risk score (para. 62, para. 68, para. 118, para. 113, and para. 52 of Hay).

Hay does not expressly disclose receiving a price risk from a marketing service, wherein the price risk is a price risk of a commodity market and is determined based on a computer analysis; determining pre-sell quantities using the price risk of the

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commodity market; and calculating a level of crop revenue insurance to assure at least a predetermined level of income from sale of predetermined pre-sell quantities of crops, thereby underwriting the predetermined level of income by pre-selling and underwriting the pre-selling by the level of crop revenue insurance.

O'Brien discloses receiving a price risk from a marketing service, wherein the price risk is a price risk of a commodity market; determining pre-sell quantities using the price risk of the commodity market (pages 5-6 and 18 of O'Brien); and calculating a level of crop revenue insurance to assure at least a predetermined level of income from sale of predetermined pre-sell quantities of crops, thereby underwriting the predetermined level of income by pre-selling and underwriting the pre-selling by the level of crop revenue insurance (pages 13-14 and 19 of O'Brien).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of O'Brien within Hay. The motivation for doing so would have been for farmer-marketers to enhance or improve their selling or purchase prices of crops (page 5 of O'Brien).

(B) Claim 23 has not been amended and is rejected for the same reasons given in the previous Office Action, and incorporated herein.

5. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Remley et al. (US 2002/0023052 A1) in view of Hay et al. (US 2002/0059091 A1), and further in view of O'Brien ("Grain Marketing Plans for Farmers").

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(A) Referring to claims 18 and 19, Remley discloses a method of providing assured income for agricultural crops comprising (see abstract of Remley):

underwriting financing of a producer of the agricultural crops by developing a plan for the producer which provides the assured income based on a minimum level of crop yield and a predetermined minimum crop price achieved by pre-selling (para. 5, para. 6, and para. 7 of Remley),

capturing additional income beyond the assured income (para. 36 of Remley) and wherein the financing is provided to a producer conditioned on use of the strategic plan (para. 35 and para. 41 of Remley).

Remley does not disclose the determination of a financial assessment score associated with the producer and a marketing financial risk score defining financial risks related to markets and income of the producer to assist in determining the assured income for the producer

Hay discloses disclose the determination of a financial assessment score associated with the producer and a marketing financial risk score defining financial risks related to markets and income of the producer to assist in determining the assured income for the producer (para. 51, para. 52, and para. 64 of Hay).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Hay within Remley. The motivation for doing so would have been to identify risk factors associated with the farm of interest (para. 51 of Hay).

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Remley and Hay do not expressly disclose implementing a strategic marketing plan and updating the strategic marketing plan with electronically supplied updated marketing information and underwriting the strategic marketing plan with crop insurance to assure the minimum level of crop to be sold.

O'Brien discloses implementing a strategic marketing plan and updating the strategic marketing plan with electronically supplied updated marketing information (page 20 of O'Brien) and underwriting the strategic marketing plan with crop insurance to assure the minimum level of crop to be sold (pages 13-14 and 19 of O'Brien).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of O'Brien within Remley and Hay. The motivation for doing so would have been for farmer-marketers to enhance or improve their selling or purchase prices of crops (page 5 of O'Brien).

6. Claims 20, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of O'Brien ("Grain Marketing Plans for Farmers"), and further in view of Friedman ("Dictionary of Business Terms").

(A) Claims 20-22 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

7. Claims 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hay et al. (US 2002/0059091 A1) in view of O'Brien ("Grain Marketing Plans for Farmers"), and further in view of Schneider (US 6,990,459 B2).

(A) Claims 24-28 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

Response to Arguments

8. Applicant's arguments filed 10/17/06 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 10/17/06.

(1) Applicant argues at page 9 that Hay is intended to primarily benefit the buyer of crops and not a producer. This is clear from paragraph [0068] which states "The selection is made to keep the price to the buyer down while also considering the overall risk profile of being able to deliver the product, and the profit to be attained by the agronomic entity."

(2) Applicant argues at page 13 that Hay discloses risk factors. However, none of the disclosed risk factors are based on a financial assessment.

(3) Applicant argues at page 13 that claim 23 is part of a functionally interrelated computing process and thus under the guidance of MPEP 2106 is not non-functional descriptive material.

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(4) Applicant argues at page 15 that Friedman does not disclose the use of a Z-factor with respect to an agricultural production business, and no convincing line of reasoning is presented by the Examiner to do so.

(1) As per the first argument, the Examiner disagrees that Hay's invention is merely for the benefit of the buyer and not the producer. At paragraph [0024], Hay discloses a tool for enabling an agricultural entity such as a specialty product provider "to price their contracts at a level that *maximizes profits* to the specialty product provider while ensuring adequate profits to the farm(s) and *acceptable pricing to the consumer*." In addition, paragraph [0068] which was pointed to by Applicant, is from the viewpoint of the buyers. Paragraph [0067] discloses estimating the profits for the farms.

(2) As per the second argument, the Examiner's broadest reasonable interpretation of "financial assessment" would include the farmer's credit history, which is disclosed at paragraph [0051] of Hay.

(3) As per the third argument, Hay does not expressly teach the specific data recited in claim 23; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d

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1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

(4) As per the fourth argument, the Examiner respectfully submits that a motivation was provided to combine Friedman with Hay at page 10 of the non-final rejection mailed 5/17/06. Since the agricultural production business is risky, the use of prediction models, such as the Z factor, would be obvious to a person of ordinary skill in the art.

9. Applicant's additional arguments with respect to claims 15, 17, 18, 19, and 29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ln

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12-11-06


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER